



POLICE DEPARTMENT

July 7, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-27185
Police Officer Dylan Arencibia	:	
Tax Registry No. 964890	:	
Police Service Area 6	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Stephanie McCarthy, Esq.
Emily Collins, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
ACTING POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Dylan Arencibia, while assigned to Housing Police Service Area No. 6, on or about August 13, 2021, used unnecessary force against a person known to the Department.

P.G. 221-01, Pages 1-2

FORCE GUIDELINES

P.G. 221-02, Pages 1-2

USE OF FORCE

P.G. 221-13, Pages 1-3, Paras. 1-10

MENTALLY ILL/EMOTIONALLY
DISTURBED PERSONS

2. Police Officer Dylan Arencibia, while assigned to Housing Police Service Area No. 6, on or about August 13, 2021, after having used force, failed to make a required entry in his Activity Log.

P.G. 212-08, Page 1, Para. 1

ACTIVITY LOGS

P.G. 221-03, Page 4, Para. 5

REPORTING & INVESTIGATION
OF FORCE INCIDENT DURING
POLICE ACTIVITY

3. Police Officer Dylan Arencibia, while assigned to Housing Police Service Area No. 6, on or about August 13, 2021, failed to notify a Patrol Supervisor or other Department supervisor about a use of force.

P.G. 221-03, Page 4, Para. 4

REPORTING & INVESTIGATION
OF FORCE INCIDENT DURING
POLICE ACTIVITY

4. Police Officer Dylan Arencibia, while assigned to Housing Police Service Area No. 6, on or about August 13, 2021, wrongfully failed or neglected to prepare a Threat, Resistance or Injury (T.R.I.) Interaction Report.

P.G. 221-03, Page 5, Para. 10

REPORTING & INVESTIGATION
OF FORCE INCIDENT DURING
POLICE ACTIVITY

5. Police Officer Dylan Arencibia, while assigned to Housing Police Service Area No. 6, on or about August 13, 2021, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by being discourteous to a person known to the Department.

A.G. 304-06, Page 1, Para. 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 6 and 12, 2023.¹ Respondent, through his counsel, entered a plea of Guilty to the charged misconduct, and testified in mitigation of the penalty. The Department Advocate introduced into evidence Body-Worn Camera (“BWC”) footage from Respondent and his partner. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review. Having evaluated all of the evidence in this matter, I recommend that Respondent be suspended without pay for ten (10) days, forfeit twenty-five (25) additional vacation days, receive training on the use of force, and be placed on one-year dismissal probation.

SUMMARY OF EVIDENCE IN MITIGATION

In the early morning hours of August 13, 2021, Respondent and his partner, Officer Orandi Guzman, were responding to a call from a fellow officer, who needed assistance in connection with a stolen vehicle that had just been recovered. Respondent, the operator, was driving a marked police van on a roadway within a Manhattan housing development when he observed an individual (“the complainant”) standing in the middle of the road. Respondent recognized the complainant from a previous Emotionally Disturbed Person (“EDP”) encounter, and so he moved the van to the left to go around the complainant. As the van was passing him, the complainant pushed in the side-view mirror on the passenger side. Respondent immediately stopped the van, and he and his partner exited and approached the complainant on foot.

¹ After initially reserving decision on June 6, the Court re-opened the record on June 12 for additional testimony from Respondent on his use of force.

Respondent in trying to handcuff the complainant. Respondent repeatedly instructs the complainant to put his hands behind his back, and the complainant states that he cannot get up with Respondent on top of him. The officers eventually place the complainant in handcuffs, and get him to his feet near the side of the van (Dept. Ex. 1 at 2:48).

Respondent testified that he recognized the complainant from the area as an individual with mental illness with whom he had an EDP encounter two years prior. During that previous incident, Respondent and three other officers struggled to subdue the complainant, who he described as a large, muscular individual. When Respondent exited his van here, he was concerned that the complainant was trying to injure himself, since he thought that the complainant may have thrown his body into the mirror on the side of the van. Respondent decided to handcuff the complainant in order to take him to the hospital. (Tr. 26-27, 40-43, 48, 52-54)

Toward that end, without first trying to verbally engage the complainant, Respondent immediately resorted to force and brought him to the ground. Respondent testified that he repeatedly instructed the complainant to put his hands behind his back, but he was not complying. According to Respondent, he did not want to remain on the complainant's back, and so he reached across with his left arm to grab the complainant's right shoulder, in an effort to rotate the complainant's body. As he did so, Respondent's left arm was close to the complainant's neck area, but Respondent stated that he was not at any point pressing with his arm into the complainant's throat, and the complainant did not complain that he was being choked or could not breathe. After the complainant was placed in handcuffs, he was transported to the hospital. (Tr. 28-29, 44, 49, 55, 92-96)

After reviewing the video footage of the encounter, Respondent conceded that in hindsight he would have approached the situation very differently. Respondent testified that he should have tried to de-escalate the situation by first speaking with the complainant. He insisted that this experience has “opened his eyes,” and that he has learned from his mistakes in this case. Respondent also acknowledged that he was discourteous in some of his comments to the complainant, such as accusing the complainant of being “fucking dumb.” Additionally, Respondent admitted that he was wrong not to notify a supervisor, which would have led to the timely preparation of a TRI report, and that he failed to make relevant entries on his use of force in his Activity Log. (Tr. 29-33, 50-52)

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. Respondent has no formal disciplinary record.

Respondent, who was appointed to the Department on January 10, 2018, has pleaded guilty to each of the charges against him, the most serious of which is for using unnecessary force against the complainant.² The Department Advocate recommends the presumptive penalty

² With respect to the use of force charge, the Department Advocate informed the Court that IAB Group 54 investigated whether Respondent’s actions constituted a chokehold. After conferring with the Tactics Unit, IAB determined that Respondent was attempting to employ a seat belt maneuver, and that there was no chokehold. Additionally, when interviewed by IAB, the complainant stated that he did not recall Respondent grabbing him around the neck, and he believed that Respondent used more of a bear hug; according to the complainant, to the extent he had trouble breathing, it was due to Respondent’s weight on his back, and not from being choked. Further, there is no mention in the complainant’s medical records of him complaining that he was choked. As such, the Department Advocate chose not to charge Respondent with use of a chokehold. (Tr. 87-90)

of 10 suspension days and 10 vacation days for the use of force charge, as well as training, and an additional forfeiture of 15 vacation days to cover the remaining four charges, for a total of 35 penalty days. Counsel for Respondent argues that a total forfeiture of 15 vacation days is appropriate here.

In support of mitigation, counsel for Respondent notes that Respondent was dealing with a strong individual, who in a previous encounter had put up a huge struggle against four officers trying to subdue him. Counsel also points to how “contrite” Respondent was on the witness stand about his conduct in this matter. Indeed, it was encouraging to hear Respondent state that after viewing the BWC footage, he realizes he should have handled this situation differently, that the experience has “opened his eyes,” and that he has become a better person and police officer because of it.

Nevertheless, the Court is troubled by Respondent’s extreme overreaction in this incident. Section 221-01 of the Patrol Guide states that the primary duty of all members of the service is to *protect* human life, including the lives of individuals being placed into police custody. “In all circumstances, any application or use of force must be reasonable under the circumstances.” With his actions here, Respondent ran afoul of the Department’s guidelines in ways that are deeply disturbing.

Respondent testified that the steps he took were based on his concern that the complainant was trying to hurt himself. However, Respondent’s words and actions suggest otherwise; he appeared to be motivated by his anger toward the complainant for the disrespectful act of pushing in the side-view mirror. Without even attempting to speak with the complainant, who was standing next to the van looking at his phone, Respondent immediately resorted to unnecessary force: he rushed at the complainant, he slammed him against the van, and he threw

him to the ground. Respondent then positioned himself on the complainant's back and wrapped his arm around the complainant before placing him in handcuffs.

During the course of this encounter, the complainant suffered a small laceration above his eye which was bleeding (*see* Dept. Ex. 4). But even without a more serious injury, Respondent's conduct here, toward an individual whom he knew had an EDP history, was dangerous and unacceptable. He failed to take any steps to deal with the situation in a measured way. Instead, he immediately resorted to retaliatory force that was extremely disproportionate to the complainant's disrespectful act of pushing in the mirror. In light of these aggravating factors, the presumptive penalty is inadequate to address Respondent's misconduct. Based on the specific circumstances presented here, in addition to forfeiting ten (10) suspension days and ten (10) vacation days, a period of monitoring is warranted.

Respondent compounded this misconduct with additional actions to which he also has pleaded guilty. He admitted to making discourteous remarks towards the complainant, failing to notify a supervisor, neglecting to prepare a T.R.I. Interaction report, and making incomplete entries in his Activity Log. His failure to notify a supervisor about his use of force prevented a timely investigation into this matter, and delayed the preparation of necessary reports. For this separate and additional misconduct, I concur with the Advocate's recommendation that a penalty of fifteen (15) vacation days be imposed, to run consecutively to the penalty for the use of force charge.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent be suspended without pay for a period of ten (10) days, that he forfeit twenty-five (25) vacation days for a total of thirty-five (35) penalty days, that he receive additional training, and that Respondent be DISMISSED from the New York City Police

Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

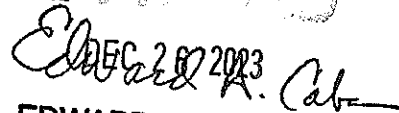
Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED



EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DYLAN ARENCIBIA
TAX REGISTRY NO. 964890
DISCIPLINARY CASE NO. 2022-27185

Respondent was appointed to the Department on January 10, 2018. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2021 and 2022, and “Meets Standards” for 2020.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials